

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MATTHEW DEROSCH,

Plaintiff,

v.

BRIAN FOSTER and M. HILLE,

Defendants.

ORDER

Case No. 19-cv-906-wmc

Plaintiff Matthew DeRosch has submitted a certified inmate trust fund account statement for the six month period preceding the complaint in support of the pending motion to proceed without prepayment of the filing fee. Accordingly, the court must determine whether plaintiff qualifies for indigent status and, if so, calculate an initial partial payment of the \$350.00 fee for filing this case.

Even when an inmate litigant qualifies for indigent status, the litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiff's trust fund account statement, I calculate plaintiff's initial partial filing fee to be \$3.05. For this case to proceed, plaintiff must submit this amount on or before December 6, 2019.

With the complaint, plaintiff also filed a motion to use release account funds to pay the entire fee for filing this case and any service fee plaintiff may accrue in serving defendants a copy of the summons and complaint. (Dkt. #6). However, with the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from a release account. Plaintiff cannot use the release account funds to pay the entire balance of the \$350.00 filing fee or any service fee in this case, and so plaintiff's motion will be denied.

ORDER

IT IS ORDERED that,

1. Plaintiff Matthew DeRosch is assessed \$3.05 as an initial partial payment of the \$350.00 fee for filing this case. Plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$3.05 or advise the court in writing why plaintiff is not able to submit the assessed amount on or before December 6, 2019. If plaintiff does not have enough money to make the initial partial payment from plaintiff's regular account, plaintiff should arrange with prison authorities to pay the remainder from plaintiff's release account.

2. If, by December 6, 2019, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

3. Plaintiff's motion for use of release account funds to pay the entire filing fee and any service fee in this case (Dkt. #6) is DENIED.

4. No further action will be taken in this case until the clerk's office receives plaintiff's initial partial filing fee as directed above and the court has screened the complaint as required by the Prison Litigation Reform Act, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 15th day of November, 2019.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge